

and other lease obligations already included and reported as a current liability on the company's balance sheet.

(4) Current liabilities shall be decreased by amounts on deposit in a CCF which are available for the payment of current liabilities.

(g) *Prior years' earnings* means the aggregate net income after tax for the three years immediately preceding the year in which the dividend is declared. An operator may include in prior years' earnings estimated net operating income after tax for the current fiscal year if such amount is based upon actual net operating income after tax for the first nine months of the current year. If an operator includes estimated current income in its prior years' earnings computation, it may also include earnings for only the immediately preceding two years, rather than three years, in the computation of prior years' earnings.

(h) *Funds available* shall mean the sum of:

(1) Amounts on deposit in any fund established pursuant to the Act plus accrued deposits, unless already included in working capital, (including interest thereon), less accrued withdrawals from any such fund;

(2) Gross book value, as shown on the operators' books of account, of subsidized vessels and related barges and containers, less accumulated depreciation;

(3) Progress payments made on subsidized vessels and related barges and containers undergoing construction, reconstruction, or reconditioning;

(4) Progress payments made on additional vessels and related barges and containers, if any, which the operator has agreed to construct or acquire pursuant to any contract entered into with the Maritime Administrator or the Maritime Subsidy Board (Board);

(5) Balance of trade-in allowances pursuant to section 510 of the Act;

(6) Capitalized Lease Obligations as defined in §283.2(b); and

(7) Working capital as defined in §283.2(f).

(i) *Funds required* means the sum of:

(1) 25 percent of the total cost to the operator of: (i) Subsidized vessels under construction, reconstruction or reconditioning, (ii) additional vessels under

construction, reconstruction or reconditioning pursuant to any contract entered into between the operator and the Maritime Administrator or the Board, and (iii) barges and containers under construction or under contract to purchase, and to be used as part of the complement of such vessels;

(2) 25 percent of the total cost to the operator, estimated at the time a cash dividend is to be declared, of: (i) Replacement of subsidized vessels required to be replaced under the current ODSA (which cost must be indicated whether or not the operator anticipates leasing replacement vessels), (ii) additional vessels which the operator has agreed to construct or acquire pursuant to any contract entered into with the Maritime Administrator or the Board, and (iii) barges and containers required as part of the complement of such vessels. In making this computation, the operator shall obtain the prior written agreement of the Maritime Subsidy Board as to number of replacement vessels, type and commercial characteristics, projected award date of construction contract, projected delivery dates, estimated total cost (current) and method used to determine such cost, intended area of operation, and identity of vessels to be replaced.

(3) Capitalized Lease Obligations as defined in §283.2(b), excluding that portion of any such amount payable within one year; and

(4) Outstanding indebtedness on, or secured by, subsidized vessels and related barges and containers, or incurred in connection with the acquisition, construction or reconstruction of such vessels and related barges and containers.

§ 283.3 Dividend policy criteria.

(a) *In general.* A subsidized operator may pay cash dividends at any time it desires up to the amount set forth in paragraph (b) of this section. Dividends may be paid pursuant to paragraph (c) of this section, as provided therein. The written approval of the Maritime Administrator shall be obtained prior to any declaration of dividends by the operator, if the payment of dividends does not meet the criteria of either paragraph (b) or (c) of this section. It is

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intended that dividend payments be permitted under the provisions of either paragraph (b) or (c), whichever allows payment of the greatest amount of dividends. Nothing in this part shall alter restrictions on the payment of dividends which may affect the operator under any other agreements with the Maritime Administrator.

(b) *40 percent dividend criteria*—If the operator is able to meet the criteria of this paragraph after declaration and payment of the proposed dividend, it may declare a dividend of up to 40 percent of prior years' earnings, less any dividends that were paid in such years, unless there is an operating loss in the fiscal year to the date of proposed payment of dividend, as well as operating losses in the immediately preceding two years. If in any of the years included in the prior years' earnings calculation dividends were paid under the 100 percent rule, those years' earnings and dividends may be excluded from the prior years' earnings calculation, and then only the earnings and dividends associated with the remaining years of the three year period may be used. This provision enables an operator to pay dividends under the 40 percent rule when in past years it has paid dividends under the 100 percent rule. The criteria which must be satisfied are as follows:

(1) *Working Capital*—Working Capital must equal or exceed one dollar.

(2) *Long-term Debt to Equity ratio*—Long-Term Debt must not exceed two times Equity. (The Maritime Administrator may modify this requirement during periods of vessel construction).

(3) *Net Worth Floor*—Net Worth must exceed the adjusted net worth floor as computed in § 283.2.

(c) An operator may declare a dividend in an amount up to 100 percent of retained earnings, unless there is an operating loss in the fiscal year to the date of proposed payment of dividend, as well as operating losses in the immediately preceding two years, if the following criteria are satisfied:

(1) *Working Capital*—Working Capital must equal or exceed one dollar.

(2) *Long-Term Debt to Equity ratio*—Long-Term debt must not exceed Equity.

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(3) *Net Worth Floor*—Net worth must exceed the Adjusted Net Worth floor as computed in § 283.2.

(4) *Funding for Replacement Vessels*—Funds available must exceed Funds Required, and the basis for Funds Required for replacement vessels must receive prior approval, as provided in § 283.2(i) herein.

§ 283.4 Alternate standards.

(a) The Maritime Administrator may waive or modify any of the financial terms or requirements otherwise applicable in part 283, upon determining that other factors exist which make alternate terms or requirements appropriate. An example of such a situation would involve an operator that: (1) Has no replacement obligation and (2) has a guarantee of charter hire or other guarantees sufficient to cover capital costs. In such cases, the Government's interest may be sufficiently protected although the operator cannot meet the standard part 283 requirements. Another example may be to include receivables otherwise excluded if they are properly guaranteed by an acceptable guarantor.

(b) [Reserved]

§ 283.5 Notification and reporting requirements.

(a) *Notice*—The operator shall give written notice of a dividend declaration to the Maritime Administrator immediately upon such declaration.

(b) *Reports*—The operator shall submit a report as described below whenever it declares a dividend or applies for approval under § 283.3 to declare a dividend as of the approximate date of such declaration or request. Such statements shall include information no less current than 30 days. If no dividends are declared during the calendar year, the operator is not required to submit a statement.

If the Maritime Administration determines that the operator was, for any reason, not qualified to pay the dividend, then the operator shall, in writing, request the approval of the Maritime Administrator for any subsequent dividend declaration. If such approval is then granted, the operator may follow the requirements of this part 283 once again. The reports required by